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SUPREME COURT
OF THE STATE OF WASHINGTON

No. 80836-2-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

DELAURA NORG, as Litigation Guardian ad Litem for her husband, FRED B. NORG, an incapacitated man, and DELAURA NORG, individually,

Respondents,

vs.

CITY OF SEATTLE,

Petitioner.

THE CITY OF SEATTLE'S MOTION FOR DISCRETIONARY REVIEW OF THE INTERLOCUTORY DECISION

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I. INTRODUCTION AND IDENTITY OF PETITIONER

The City of Seattle respectfully requests that this Court accept discretionary review of the Court of Appeals published interlocutory decision, which analyzes the application of the public duty doctrine to the handling of 911 emergency calls. Division One held as a matter of law that neither the public duty doctrine nor its exceptions apply to the acts or omissions of a municipality's 911 emergency service dispatcher *unless* the source of the duty is mandated by a statute or ordinance. *Norg v. City of Seattle*, No. 80836-2-I, 2021 Wn. App. LEXIS, at *5-14 (Div. I, July 19, 2021). Further, it relied on *Beltran-Serrano v. City of Tacoma*, 193 Wn.2d 537, 549, 442 P.3d 608 (2019) and *Mancini v. City of Tacoma*, 196 Wn.2d 864, 879, 479 P.3d 656 (2021) to support its holding, even though neither case addresses the public duty doctrine in the context of 911 emergency calls. Discretionary review is appropriate under RAP 13.5(b)(1) and/or (2).

First, Division One committed an obvious or probable error because its position contradicts the majority opinion in *Cummins v. Lewis County*, 156 Wn.2d 844, 858, 133 P.3d 458 (2006). There, the Supreme Court held "there is neither a statutory nor a common law duty on the part of a county to dispatch medical aid" under the facts of the case. *Id*. at 848. The *Cummins* Court continued as "previously defined by this court, a municipality's duty to respond to a 911 call is a general duty owed to all

regardless of the type of aid requested." *Id*. at 858. The Court concluded that Lewis County "was merely carrying out responsibilities it generally owed to the public when it fielded Mr. Cummins's call and that no common law duty was owned to Mr. Cummins individually[.]" *Id*. at 861. Accordingly, government 911 dispatch cases inherently fall within the public duty doctrine. There is no actionable duty unless an exception to the doctrine applies.

Second, in holding that the public duty doctrine and its exceptions did not apply, the Court of Appeals committed obvious or probable error by relying on the *non-precedential*, three-justice concurrence in *Cummins*, then conflating it with the *precedential* concurrence in *Munich v. Skagit Emergency Commc'ns Ctr*., 175 Wn.2d 871, 894. 288 P.3d 328 (2012). Division One stated that "Justice Chambers' concurrences in *Cummins* and *Munich* stand for the proposition that the public duty doctrine applies only when the duty at issue arises out of a statute or ordinance mandating action by the government entity." *Norg*, 2021 Wn. App. LEXIS at *11.

This is an obvious or probable error because Justice Chambers' precedential concurrence in *Munich* disavowed any intent to modify *Cummins*: "I would not change any of precedents," and "I would not reexamine any case where we have held the government does or does not owe a duty." *Munich,* 175 Wn.2d at 894. Accordingly, *Cummins* still stands

for the proposition that the public duty doctrine applies to 911 emergency dispatch calls. Division One committed obvious or probable error by failing to apply the *Cummins*' majority opinion and *Munich*'s precedential concurrence to the facts of this case.

Third, Division One committed an obvious or probable error by relying on two Supreme Court cases for the proposition that the City's 911 emergency dispatch service is equivalent to a private ambulance company's service. *Norg*, 2021 Wn. App. LEXIS at *13 (citing *Vogreg v. Shepard Ambulance Co*., 47 Wn.2d 659, 289 P.2d 350 (1955) and *Scott v. Rainbow Ambulance Serv., Inc.*, 75 Wn.2d 494, 452 P.2d 229 (1969)). But the alleged negligence in *Vogreg* and *Scott* occurred while the injured person was in the ambulance company's care. In contrast, the City had not begun caring for the injured person at the time of the alleged negligence. The alleged negligence related solely to the 911 dispatch.

Finally, to the extent that the public duty doctrine and its exceptions do not apply, Division One committed obvious or probable error by failing to properly apply the voluntary rescue doctrine. That doctrine prohibits recovery where, as here, the person being rescued did not detrimentally rely on the rescuer and the rescuer did not increase the harm beyond what would have occurred without the rescuer's participation.

The foregoing obvious errors render further proceedings useless because the threshold issue at trial is whether the City owes an actionable duty. If not, plaintiff's negligence claim would fail. Alternatively, the foregoing probable errors substantially alter the status quo because neither *Beltran-Serrano* nor *Mancini* expressly overruled *Cummins* and other public duty doctrine cases. *See Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 280, 208 P.3d 1092 (2009) (stating that when the Supreme Court has "expressed a clear rule of law" it "will not—and should not—overrule it *sub silento*" because "to do so does an injustice to parties who rely on this court to provide clear rules of law and risks increasing litigation costs and delays to parties who cannot determine from this court's precedent whether a rule of decisional law continues to be valid").

II. DECISION BELOW

The City of Seattle seeks discretionary review of the Court of Appeals published interlocutory decision, *Norg v. City of Seattle*, No. 80836-2-I, 2021 Wn. App. LEXIS 1745 (Div. I, July 19, 2021).

III. ISSUES PRESENTED FOR REVIEW

Did the Court of Appeals commit obvious errors rendering further proceedings useless (RAP 13.5(b)(1)) or commit probable errors which substantially alters the status quo (RAP 13.5(b)(2)) when:

A. It held that the public duty doctrine applies only when the duty at issue arises out of a statute or ordinance mandating government

action, in derogation of the *Cummins* majority opinion, and Supreme Court precedent, including *Munich*'s precedential concurrence, and regardless if the government duty is general?

B. It held that the 911 municipal dispatch service is equivalent to a private ambulance company service, then relied on inapposite cases wherein ambulance medics had provided emergency medical care, even though the Norgs' negligence claim arises from the 911 dispatch and not from the Seattle Fire Department's provision of emergency medical care?

C. It refused to consider the exceptions to the public duty doctrine and, as a matter of law, the Norgs could not satisfy the special relationship or rescue doctrine exceptions because they submitted no admissible evidence supporting the element of detrimental reliance?

D. It misapplied *Beltran-Serrano* and *Mancini* to the facts of this case such that an actor, including the government, now has an actionable duty to exercise reasonable care once the actor assures another that it will provide voluntary assistance in response to a medical emergency even if the actor's assurance is not detrimentally relied on and causes no independent harm?

IV. STATEMENT OF THE CASE

A. THE CITY FIRE DEPARTMENT'S DELAYED MEDICAL RESPONSE TO A 911 CALL.

Plaintiff Fred Norg had a heart attack on February 7, 2017 and stopped breathing. Clerk's Papers (CP) 147. After his wife, Delaura Norg, discovered her husband's condition, she called 911 and gave the dispatcher her address. The Seattle Fire Department (SFD) from Engine 16, Engine 17 and Advanced Life Support paramedic unit Medic 16 were dispatched to that address. CP 171-72. The 911 dispatcher told Mrs. Norg that "they're on the way" and instructed Mrs. Norg in CPR for the remainder of the call

while periodically encouraging and informing her that the emergency responders would arrive at any moment or that they had arrived. CP 179.

The three responding units received the Norgs' correct address for the Circa Apartments—6900 East Green Lake Way N. CP 175. However, they all initially responded to the Hearthstone about four blocks away at 6720 E Green Lake Way N. CP 197. For purposes of this Court's review, the City does not contest that the SFD initially went to the wrong address, thereby delaying its medical response to Mr. Norg's emergency. The emergency responders arrived inside the Norgs' apartment unit about three minutes after arriving on-scene at their apartment complex, for a total actual (door-to-door) response time of between 12-15 minutes. CP 215-16. The SFD resuscitated Mr. Norg; he sustained cognitive and neurological deficits as a result of his cardiac arrest. CP 231.

B. The Norgs Alleged Personal Injury Negligence.

In October 2018, the Norgs filed suit against the City, alleging that the SFD negligently responded to the 911 call, and should have arrived and resuscitated Mr. Norg sooner. CP 1-12. The City asserted an affirmative defense that the public duty doctrine barred the Norgs' negligence claim. CP 13-22.

At no time did the Norgs rely on the SFD to their detriment. Mr. Norg was nonresponsive at the time of the 911 call and testified during his

deposition that he has no independent recollection of the events of February 7, 2017. CP 230-31. Mrs. Norg admits she could not have obtained any professional medical care for Mr. Norg faster than that provided by SFD and Mr. Norg's heart could not have been restarted by someone else sooner than it was by SFD. CP 145-62.

C. Procedural History

In cross motions for summary judgment, the trial court granted the Norgs' motion to (1) strike the City's affirmative defense of the public duty doctrine; and (2) recognize a common law duty of reasonable care derived from *Beltran-Serrano*. CP 23-40.

The City moved for certification of interlocutory discretionary review under RAP 2.3(b)(4), CP 369-81, which the trial court granted over the Norgs' objection. CP 469-70. The Court of Appeals accepted interlocutory discretionary review, and released its published decision on July 19, 2021. This motion follows.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

A. The "Obvious" and/or "Probable Error" Standard Applies.

This Court should grant discretionary review pursuant to RAP 13.5(b)(1) and/or RAP 13.5(b)(2) because the errors raised are threshold issues, such as immunity. The RAP 13.5(b)(1)-(2) criteria mirrors RAP 2.3(b)(1)-(2). In *Hartley v. State*, 103 Wn.2d 768, 773-74, 698 P.2d 77

(1985), this Court granted discretionary review in part because the case would have “wide implications for governmental immunity.” *See also* *Walden v. City of Seattle*, 77 Wn. App. 784, 789-90, 892 P.2d 745 (1995) (stating that when “immunity rights” are at issue, the court “liberally” applies RAP 2.3(b) and may grant review “*regardless* of whether the error renders ‘further proceedings useless’”) (emphasis in original) (quoting RAP 2.3(b)).

B. The Court of Appeals Erroneously Requires a “Statutory Mandate” before Applying the Public Duty Doctrine.

The Court of Appeals committed obvious error or probable error when it created a new test for trial courts to apply the public duty doctrine and ignored both decades of Supreme Court public duty doctrine precedent and the public policy that informs those cases by holding that a statutory or regulatory mandate is required before the public duty doctrine applies. *See* *Norg*, 2021 Wn. App. LEXIS, at *5-13.

Relying extensively on a *non-binding* concurrence in *Cummins*, the Court of Appeals held that the “source of the duty” determines whether the doctrine applies. *Id*. “General obligations owed to the public are those duties mandated by statute or ordinance.” *Id*. at *6 (citing *Munich*, 175 Wn.2d at 888-89 (Chambers, J., concurring, joined by four justices)). The foregoing is obvious or probable error because it conflicts with Supreme

Court precedent providing that a statutory mandate is <u>not</u> required for application of the doctrine: "Washington courts follow the rule that 'to be actionable, the duty must be owed to the injured plaintiff, and not one owed to the public in general. This basic principle of negligence law is expressed in the 'public duty doctrine.'" *Cummins*, 156 Wn.2d at 852 (quoting *Taylor v. Stevens Cnty*., 111 Wn.2d 159, 163, 759 P.2d 447 (1998) (additional citations omitted)).

In *Cummins*, this Court determined that the public duty doctrine applied to 911 responses without considering whether a statutory mandate required such responses. The Court continued: '"Under the public duty doctrine, no liability may be imposed for a public official's negligent conduct unless it is shown that the duty breached was owed to the injured person as an individual and was not merely the breach of an obligation owed to the public in general (*i.e*., a duty to all is a duty to no one)."' *Id.* (quoting *Taylor*, 111 Wn.2d at 163 (internal quotations omitted) (additional citations omitted)). This Court did not tie the application of the public duty doctrine to 911 dispatch calls based on some statutory mandate.

Supreme Court precedent establishes that "recovery from a municipal corporation in tort is possible only where plaintiff shows that the duty breached was owed to an individual, and was the breach of a general obligation to the public in general, *i.e.*, a duty owed to all is a duty owed to

none." *Beal v. City of Seattle*, 134 Wn.2d 769, 784, 954 P.2d 237 (1998); *see also Chambers-Castanes v. King Cnty*., 100 Wn.2d 275, 288, 669 P.2d 451 (1983) (stating that "[a]brogation of the doctrine of sovereign immunity did not create duties where none existed before. It merely permitted suits against government entities that were previously immune from suit. Consequently, unless legislation or judicially created exceptions create a duty, where none existed before, liability will not attach.") RCW 4.96.010(1) makes the City liable "to the same extent as [it was] a private person or corporation" which means that, in cases of voluntary rescue, as here, the same voluntary rescue test that applies to private parties must be applied to the City or another exception to the public duty doctrine must be applied to determine whether a duty exists, regardless of whether there is a statutory mandate.

The Court of Appeals also relied on *Munich*'s concurrence to support its holding. *Norg*, 2021 Wn. App. LEXIS, at *6-12. But Justice Chambers' precedential concurrence in *Munich* disavowed any intent to modify *Cummins*: "I would not change any of precedents," and "I would not reexamine any case where we have held the government does or does not owe a duty." *Munich,* 175 Wn.2d at 894. Accordingly, *Cummins* still stands for the proposition that the public duty doctrine applies to 911 emergency dispatch calls. Division One committed obvious or probable

error by failing to apply the *Cummins*' majority opinion and *Munich*'s precedential concurrence to the facts of the case at bar.

C. The Court of Appeals Erroneously Equated Municipal 911 Services to Private Ambulance Companies, then Relied on Factually Inapposite Cases.

The *Munich* concurrence states that "the public duty doctrine was not applied to duties that governments had in common with private persons." *Munich*, 175 Wn.2d at 888. The record contains no evidence that the City's 911 emergency dispatch service has any duties in common with private persons because there is no admissible evidence of a private 911 emergency service analog.

The City's 911 emergency dispatch service is a mandatory system. *See* RCW 38.52.500 (upon which the Supreme Court relied in *Cummins* to support application of the public duty doctrine, and acknowledged by the *Norg* decision as the source of the doctrine in *Cummins*). The Norgs cited RCW 38.52.500 in their briefing. *See* Resp. Br. at 17 n.3.

In Washington, private individuals, unlike the City, do not operate advance or basic life support ambulance services at no cost to the general public. The City's 911 emergency medical dispatch functions are quintessentially public duties and are governed by a public duty doctrine analysis. The City's emergency medical dispatch services are part of the 911 system and the public duty doctrine applies to Seattle 911 emergency

dispatch services. No private party in Seattle operates a 911 emergency medical dispatch service or indeed any 911 dispatch service.

Recognizing the absence of a private analog to municipal 911 emergency services, the Court of Appeals instead focused on inapposite private ambulance service cases. *Norg*, 2021 Wn. App. LEXIS, at *12-13. Division One committed an obvious or probable error by relying on two Supreme Court cases for the proposition that the City's 911 emergency dispatch service is equivalent to a private ambulance company's service. *Id*. Moreover, the Court of Appeals compounded this error by failing to recognize that those cases involved negligence in the delivery of medical service not in providing emergency dispatch services.

The Court of Appeals relied on *Vogreg v. Shepard Ambulance Co*., 47 Wn.2d 659, 289 P.2d 350 (1955) and *Scott v. Rainbow Ambulance Service, Inc*., 75 Wn.2d 494, 452 P.2d 229 (1969). *Id*. Neither case states that a municipal dispatch service is equivalent to a private ambulance company service. Moreover, the alleged negligence in *Vogreg* and *Scott* occurred while the injured person was in the ambulance company's care. In contrast, the City had not begun caring for the injured person at the time of the alleged negligence. The Norgs' negligence claim relates to the City's provision of the emergency dispatch service.

Here, a common law duty to exercise reasonable care began—as it does with private medical providers—when the Seattle Fire Department employees *started performing actual emergency medical procedures*. *Timson v. Pierce Cnty. Fire Dist. No. 15*, 136 Wn. App. 376, 384, 149 P.3d 427 (2007) supports this proposition: "[i]n this case, the duty owed to Timson was the duty that the Fire District and state patrol owed to the public in general. Timson was not injured in the accident; *the Fire District and state patrol did not render aid to her*. Any duty owed to Timson was the same as that owed to the public in general." *Id*. (emphasis added). Based on the foregoing, it was error for the Court of Appeals to (1) impose a common law duty on the City by analogizing a municipal 911 dispatch service with a private ambulance service; and (2) rely on cases addressing medical treatment when the Norgs' negligence claim does not pertain to medical treatment.

D. The Court of Appeals Erred in Refusing to Apply the Exceptions to the Public Duty Doctrine.

The Court of Appeals interpreted *Beltran-Serrano* and *Mancini* to *per se* impose an actionable common law duty on governments providing 911 emergency response services, completely divorced from any application of the exceptions to the public duty doctrine. This was obvious or probable error. First, this case is materially different than *Beltran-*

Serrano and *Mancini*. Cases such as *Beltran-Serrano* and *Mancini* simply reaffirmed that the public duty doctrine is not at issue in cases involving misfeasance of law enforcement officials. But that is not at issue here. The Court of Appeals explained: "Misfeasance is '[a] lawful act performed in a wrongful manner"' and "[n]onfeasance is '[t]he failure to act when a duty to act exists."' *Norg*, 2021 Wn. App. LEXIS at *18 (citations omitted). But then came to the erroneous conclusion that responding to a call for emergency medical help in a negligent manner is performing a lawful act in a wrongful manner; it is not the failure to act." *Id*.

The City's alleged negligence in responding to the 911 call, however, did not actively and affirmatively cause Mr. Norg's alleged injuries. The purpose of the public duty doctrine is to first determine whether a duty even exists. The City did not "fail[] to act when a duty to act exists" because binding Washington law holds that there is no duty owed under the facts of this case, common law or otherwise. *Id*.; *Cummins*, 156 Wn.2d at 852-53. The public duty doctrine applies here.

Second, if a government is performing a public duty, it does *not* owe any particular person a duty and cannot be liable *unless* an exception applies. *Taggart v. State*, 118 Wn.2d 195, 218, 822 P.2d 243 (1992). Because the public duty doctrine applies here, the Court of Appeals should have considered the "four exceptions to the public duty doctrine in which

the governmental agency acquires a special duty of care owed to a particular plaintiff or a limited class of potential plaintiffs." *Babcock v. Mason Cnty. Fire Distr.*, 144 Wn.2d 774, 786, 30 P.3d 1261 (2001). These exceptions include (1) legislative intent; (2) failure to enforce; (3) the rescue doctrine; and (4) a special relationship. *Id*. The Norgs argued below that if the public duty doctrine applied, the rescue doctrine and special relationship exceptions existed. CP 305-16; CP 329-31. But the Norg's failed to present evidence that raised an issue of material fact as to the application of either exception.[1]

Similarly, the Norgs failed to demonstrate their case fall into the "narrow" special relationship exception, which arises only if: '"(1) there is direct contact or privity between the public official and the injured plaintiff which sets the latter apart from the general public, and (2) there are express assurances given by a public official, which (3) gives rise to justifiable reliance on the part of the plaintiff.'" *Babcock*, 144 Wn.2d at 786 (quoting *Beal*, 134 Wn.2d 785). "**Justifiable reliance**" means "**detrimental**

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[1] For example, Mrs. Norg testified that "I would have done exactly what I did do" (chest compressions), even if the dispatcher had told her that the fire fighters had gone to the wrong address and would be delayed. CP 149-50. She also affirmed that the 911 dispatcher did not prevent her from doing anything differently to improve her husband's outcome. CP 150-51. This evidence fails to establish the "detrimental reliance" element of either exception.

reliance." *Babcock*, 144 Wn.2d. at 793 ("For the government to be bound the plaintiffs must rely upon the assurance to their detriment"). Here, the Norgs made no showing of detrimental reliance.

Indeed, this case is remarkably similar to *Cummins*, wherein this Court explained that "Mrs. Cummins must further demonstrate sufficient facts showing that Mr. Cummins justifiably relied on an explicit assurance given by the 911 operator. To bind the government, Mr. Cummins must have relied upon the assurance to his detriment." *Cummins*, 156 Wn.2d.at 856. (citations omitted). The Court held that because there were no fact questions on detrimental reliance, the Cummins' claims were barred as a matter of law. This Court concluded that:

> [E]ven if this court were to infer that Mr. Cummins was provided an assistance promise, **Mrs. Cummins does not show Mr. Cummins was induced to and did purposefully remain at his physical location awaiting help in reliance upon the dispatcher's assistance assurance**.

Id. at 857 (emphasis added) (citations omitted). *Cummins* should have compelled the same result in the Court of Appeals.

Similarly, in *Babcock*, the plaintiffs alleged a "negligently delayed dispatch of emergency equipment" to a fire at the plaintiff's home. 144 Wn.2d at 782. They further alleged a negligent response after dispatch. *Id.* Mr. Babcock argued that he did not rescue his property from the fire because of express assurances from a fire fighter that "fire fighters would

take care of protecting his property." *Id.* at 788-89. In rejecting the plaintiff's special relationship argument, the Supreme Court held there was no question of fact on detrimental reliance because Mr. Babcock "did not discontinue his efforts to salvage his property because of the statements made by the fire fighter." *Id.* at 793.

Based on the record below, the Norgs failed to present evidence raising a material fact on either the rescue or special relationship exception. If review is granted, this Court will be able to determine on the record that both the public duty doctrine exists and no exceptions apply and thus the City was entitled to summary judgment dismissing the Norgs' claims.

E. The Court of Appeals Erroneously Interpreted the Voluntary Rescue Doctrine by Omitting Critical Factors, such as Detrimental Reliance.

The Court of Appeals deviated from clear Supreme Court precedent by misapplying the RESTATEMENT (SECOND) OF TORTS § 323 (1965), to exclude elements of the voluntary rescue doctrine without any analysis or citation to cases interpreting the Restatement. The Court concluded that the City owed Mr. Norg a duty under § 323, regardless of any reliance or alternative options for Mr. Norg to obtain care. *See Norg*, 2021 Wn. App. LEXIS at *12, 19 (stating the Norgs "need only prove that the negligence increased the risk of harm").

The Court of Appeals failed to consider precedent that requires a voluntary rescuer to have increased the harm *beyond the harm* that would have been suffered had the rescuer not responded, and the requirement of detrimental reliance. "Under the voluntary rescue doctrine, an actor owes a duty to a person he or she should know is in need if (1) the actor voluntarily promises to aid or warn the person in need and (2) the person in need reasonably relies on the promise or a third person … reasonably relies on the promise." *Mita v. Guardsmark*, 182 Wn. App. 76, 84-85, 328 P.3d 962 (2014) (citations omitted).

The person in need may reasonably rely on the promise if it induces him to "refrain from seeking help elsewhere." *Folsom v. Burger King*, 135 Wn.2d 658, 676, 958 P.2d 301 (1998). Here, the Court of Appeals application of RESTATEMENT (SECOND) OF TORTS § 323 is in direct conflict with this Court's rulings on the voluntary rescue doctrine which require an "increased risk of harm" that would not have occurred but for the rescuer's actions and reliance on that action.

The *Folsom* Court, relying on the rule announced in *Brown v. MacPherson's Inc.*, 86 Wn.2d 293, 299, 545 P.2d 13 (1975), explains that the voluntary rescue doctrine applies to "[a] person who undertakes, albeit gratuitously, to render aid to or warn a person in danger is required by Washington law to exercise reasonable care in his or her efforts. *If a rescuer*

fails to exercise such care and consequently increases the risk of harm to those he or she is trying to assist, the rescuer may be liable for physical damage caused." *Folsom*, 135 Wn.2d at 676 (emphasis added). In *Brown*, the Court cited to §323(a), the same provision relied upon by the Court of Appeals, for the proposition that a rescuer may only be liable for damages the rescuer *causes*. 86 Wn.2d at 299. However, under the Court of Appeals interpretation of the doctrine, the City is liable for damages *it failed to prevent* rather than damages the City caused. *Norg*, 2021 Wn. App. LEXIS, at *19. This interpretation is obvious or probable error.

VI. CONCLUSION

The Court of Appeals ignored Supreme Court precedent that the public duty doctrine applies to a City's dispatch of 911 emergency medical services. The error was compounded by adopting a non-precedential concurring opinion to suggest that *Cummins*' binding precedent was overruled, when it was not. As a result, the Court of Appeals presumptuously threw out the protection of the public duty doctrine for hundreds of local governments that provide 911 emergency medical service dispatch. Review is appropriate under RAP 13.5 to correct the Court of Appeals obvious and probable error. Accordingly, the City of Seattle respectfully requests that the Court grant its motion for discretionary review of the Court of Appeals July 19, 2021 decision.

Respectfully submitted this 18th day of August, 2021.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington, that on the date noted below, a true and correct copy of the foregoing was delivered and/or transmitted in the manner noted below:

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DATED at Seattle, Washington on August 18th, 2021.

/s/ Susan L. Klotz
Susan L. Klotz
Legal Assistant

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Filing Motion for Discretionary Review of Court of Appeals

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